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C O N F I D E N T I A L SECTION 01 OF 03 PORT AU PRINCE 001628

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E.O. 12958: DECL: 10/05/2014
TAGS: PGOV, PHUM, PREL, PINR, HA, Security Situation
SUBJECT: HAITI: BAR ASSOCIATION PRESIDENT ON IGOH'S FAILURE
TO ADDRESS JUDICIAL REFORM AND SECURITY ISSUES IN THE
COUNTRY

Classified By: Deputy Chief of Mission Douglas Griffiths, REASONS 1.5(B)
) AND (D).

1. (C) Summary: Poloff discussed the deplorable state of the judiciary, prolonged pretrial detention, and the deteriorating security situation in Haiti with Port-au-Prince Bar Association president Gervais Charles. Charles acknowledged that the Haitian judicial system faces inherent structural and procedural problems, but he also suggested that many flaws could be addressed through a comprehensive plan of judicial reform, which the interim government has failed to implement thus far. He offered Bar Association initiatives as examples of how reform could be achieved. On security, Charles blamed the interim government for failing to respond to the aspirations of those in slum areas like Cite Soleil and Bel Air. In his opinion, the violence which began in those areas some months ago was destined to spread throughout the capital and that if the trend continued, Haiti risked becoming "ungovernable." Charles claimed that he was not seeking the position of minister of justice, but acknowledged that Minister Gousse had failed during his tenure. End Summary.

Prolonged Pretrial Detention and Other Judicial Woes

2. (U) Well-verses on the Haitian legal system combined with over 20 years of experience, Gervais Charles assumed the presidency of the Port-au-Prince Bar Association in September 2004. Charles asserted that the judicial system's

dysfunction stems from a lack of proper case management at Port-au-Prince's court of first instance (parquet). The parquet is where defendants are brought to be charged initially by the state prosecutor (commissaire du gouvernement), or for simple matters by the justice of the peace, before being placed in preventive detention while their case is investigated by the investigating judge (juge d'instruction). Ideally this process is not supposed to take longer than 48 hours (the 48-hour rule, or garde à vu), but people are usually held in police stations (commissariats) for months, before ever going to the parquet. (Note: Even if a defendant has gone before the judge of first instance at the parquet, it is possible that they might be shuffled back and forth between there and the police station, unless they have the means to pay off the judge or the police for their release. End Note.) Charles suggested the Ministry allow the parquet to function around the clock and on weekends to reduce the number of people being held longer than the 48-hour rule and to dispose of mundane cases in a timelier fashion.

3. (C) Charles noted that the staff at the parquet is overwhelmed by its caseload and the building, poorly situated in downtown Port-au-Prince at the threshold of Bel Air, is bursting at the seems. Recent concerns over violence in the area, lack of security, and continuing space deficiencies at the parquet have further decreased its capacity to function. He reported that the building is so insecure that judges sometimes refuse to risk their lives to appear for hearings. Charles also pointed out that since the judges handle cases on a rotating schedule, one judge's absence can throw off the entire rotation and further delay a case. He proposed relocating the parquet to a more secure, existing government-owned facility situated between the main courthouse (palais de justice) and the National Penitentiary.

Charles said he presented his proposal to Justice Minister Gousse last month who replied that the ministry lacked the funds to effect such a move.

4. (U) Charles also attributed the judicial system inertia to lack of judicial staff, from justices of the peace and investigating judges, to court clerks, to expedite cases through the system. He used the current pretrial detention numbers to demonstrate his argument. For the 1,500 detainees in Port-au-Prince prisons, there are only ten judges on staff to investigate their cases, at a ratio of 150 cases per judge. (According to Haitian law, the investigating judge has two months to conduct the investigation and make a recommendation to the state prosecutor, who then has one month to review the case and make a determination on the penalty.) Charles said that the statutory delay is now magnified times ten due to staffing deficiencies at every level. He added that for criminal cases, the lack of trained forensic experts, in the investigating judge's office and in the police, further exacerbates the delay.

5. (U) Charles offered the example of a recent initiative sponsored by the Bar Association designed to help alleviate the system's burdens. In February 2005, the Port-au-Prince

Bar began a legal assistance program which provides poor defendants with pro bono legal representation by law students. This program began in conjunction with the special sessions targeted at reducing the rolls of those in pretrial detention initiated by the dean of the court (doyen). Since February, Charles reported that approximately 100 law students have canvassed the prisons and police stations throughout the capital, identified those in need of legal representation, and assisted in moving several cases at various stages through the judicial mechanisms (Note: According to the Port-au-Prince dean's office, from March through mid-April, 38 cases have been adjudicated through the special session, resulting in a mere 10 release orders through mid-April. End Note.) The recent graduation of 30 law students from the program and the precarious location of certain prisons and police stations (Cite Soleil, Fort National) has slowed the pace of the program a bit, but Charles insisted that the program would continue. Charles also mentioned that the Bar Association announced last week that it would provide legal representation for victims of the May 31 Marche Tete Boeuf fire if they decide to pursue legal recourse.

IGOH and Security

6. (C) Charles blamed the government for the recent decline in security in the capital. In his estimation, the interim government had never developed a clear strategy on how to foster dialogue with Lavalas partisans in the key neighborhoods like Cite Soleil and Bel Air. He said the prime minister further aggravated the tensions when he was quoted in the press as saying that the violent crime in the capital was "localized" in certain neighborhoods. The IGOH further sowed the seeds of resentment in the popular neighborhoods by affording tax breaks to the business owners who suffered losses during the political crisis in 2004, without doing anything to improve the lives of the poor. He pointed to the current trend of violence spreading out from Bel Air and Cite Soleil as an inevitable outcome of the government's failure to develop a comprehensive approach to security.

Ministerial Ambitions?

7. (C) Asked how he would address judicial reform if he were Minister of Justice, Charles responded that he would prefer to retain his position at the bar association and had no desire to hold a cabinet level position. Charles said that he has had several discussions with fellow lawyer and bar member Justice Minister Gousse concerning Gousse's role. He told Gousse that he did not envy his position and that it took a great deal of courage to be minister of justice in Haiti, but that he must also "do the job he was selected to do." In Charles' opinion, Gousse had failed to rise to the task.

8. (C) Charles criticized Gousse for lacking a clear strategy to address the problems with the judicial system. He said that Gousse often made short-sighted decisions without

factoring in the consequences for the entire judicial system. Charles cited the example of Gousse's caseload reassignment of two corrupt investigating judges, Fleury and Fabien. In Charles' view, Gousse missed the opportunity to implement measures tackling the larger issue of judicial corruption. Charles also expressed his disappointment at Gousse's failure to make more progress on the judicial independence commission and for failing to consult with the Bar Association on the commission's agenda.

Comment

9.(C) Overall, Gervais Charles presented sound initiatives to address key deficiencies in Haiti's justice system. Given the appropriate resources to execute his strategy, he could probably make a positive impact on judicial reform. His tenure as Bar Association president has been productive thus far and he promised to continue pushing his programs forward.

Charles has been mentioned as a possible replacement for Gousse, if and when the PM shuffles his cabinet again. Businessman Reginald Boulos is one who has pushed this with us saying Charles is "clever but not stubborn like Gousse, and would listen to those who press him to address the real problems of prolonged detention." Charles, however, was a well-known G-184 activist and Andy Apaid's lawyer, so he would likely be greeted with skepticism by pro-Lavalas partisans here and in the diaspora.

BioNote

10. (C) An avuncular figure, Gervais Charles is well into his fifties, and speaks perfect English. He has a warm personality and gentle manner, but speaks rather authoritatively on legal matters.

FOLEY

=====CABLE ENDS=====